IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16636 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAVINCHANDRA SHANKARLAL SHAH

Versus

DY.COLLECTOR

Appearance:

1. Special Civil Application No. 16636 of 2004

MR DIPAK R DAVE for Petitioner No. 1

Mr. PD Bhate, AGP for Respondents.

NOTICE SERVED BY DS for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 28/12/2004

ORAL JUDGEMENT

In this matter, notice is issued for final disposal, and with the consent of parties, the matter is taken up for final hearing today. Rule. Mr. PD Bhate, learned AGP waives service of Rule on behalf of the respondents.

2. In this petition under Article 226/227 of the Constitution of India the petitioner has challenged the legality and validity of the order passed by the Deputy Collector, Stamp Duty Valuation Department, Vadodara dated 28th February 2003 by which the Deputy Collector, Stamp Duty Valuation, Vadodara, has directed the petitioner to deposit the deficit stamp duty in exercise of powers under Section 32-A of the Bombay Stamp Act, 1958 ["the Act" for short].

3. The petitioner purchased the property in question by registered Sale Deed dated 16.7.2001 and the same was presented before the Sub-Registrar, Vadodara, on the same date. It is the case of the petitioner that the petitioner has paid the stamp duty on the basis of the market value prevailing at the relevant time. It appears that the Sub-Registrar, Vadodara, was of the opinion that the market value on the basis of which stamp duty is paid is not the correct market value and that it is undervalued and therefore he referred the document to the Deputy Collector, Stamp Duty Valuation for determination of the correct market value in exercise of powers under Section 32-A of the Act. It appears that notice under Rule 4 of the Bombay Stamp [Determination of Market Value of Property] Rules, 1984 ("the Rules" for short) came to be issued by the Deputy Collector, Stamp Duty Valuation, Vadodara, on 25.6.2002 and 1.1.2003 determining provisional market value of the property in question at Rs. 42,00,000 and the petitioner was directed to produce the documentary evidence if any with regard to market value of the property in question. It is the case of the petitioner that the petitioner was not served with any notice under Rule 4 of the Rules and straightway the petitioner received one notice dated 30th September 2003 issued by the Special Recovery Officer, Stamp Duty VAluation, Vadodara under Section 152 of the Bombay Land Revenue Code directing the petitioner to pay/deposit an amount of Rs. 5,73,610 towards deficit stamp duty and penalty of Rs. 250. It is the case of the petitioner that immediately the petitioner applied for the certified copy/copy of the order dated 28.2.2003 passed by the Deputy Collector, Stamp Duty Valuation, Vadodara and after obtaining the same preferred an appeal before the appellate authority, i.e. Chief Revenue Controlling Authority, State of Gujarat and submitted an application on 29.2.2004 for allowing him to prefer appeal on deposit of 12.5% of the amount. It appears that the Chief Revenue Controlling Authority, State of Gujarat, Gandhinagar, dismissed the said application/appeal as the appeal preferred by the petitioner was not within the

period of limitation and the petitioner was informed accordingly vide communication dated 30th October 2004. Thus, being aggrieved and dissatisfied with the order passed by the appellate authority dated 30th October 2004 as well as original order passed by the Deputy Collector, Stamp Duty Valuation, Vadodara dated 28.2.2003 and also the attachment notice issued under Section 152 of the Bombay Land Revenue Code dated 30th September 2003, the petitioner has preferred the present Special Civil Application under Article 226 of the Constitution of India.

4. Shri Dipak R. Dave, learned advocate appearing on behalf of the petitioner has submitted that the impugned order passed by the Deputy Collector, Stamp Duty Valuation dated 28.2.2003 is without giving any opportunity of being heard to the petitioner and the same is in violation of the principles of natural justice. He has also further submitted that even the impugned order dated 28.2.2003 is a non-speaking order and no basis is mentioned upon which the market value of the property in question has been determined by the authority at Rs. 42,00,000. He has further submitted that fixation of the market value of the property in question at Rs. 42,00,000 is absolutely illegal and most arbitrary which requires to be quashed and set aside. It is further submitted that even while passing the impugned order the procedure which is required to be followed under the aforesaid Rules is not followed and under the circumstances the impugned order dated 28.2.2003 itself is non-est and illegal and accordingly the appellate authority ought to have quashed and set aside the same.

5. Shri PD Bhate, learned AGP appeared on behalf of the respondent authorities. It is submitted that as the petitioner did not file any reply and/or objection to the fixation of the provisional market value at Rs. 42,00,000 the authority is justified in determining the market value of the property in question at RS. 42,00,000. It is further submitted that considering the market value prevailing at the relevant time the authority has passed the order determining the market value of the property at Rs. 42,00,000 which is just and proper and therefore requested to dismiss the present Special Civil Application.

6. Heard the learned advocates appearing on behalf of the parties. It is the case of the petitioner that the petitioner had not received any communication/notice dated 25.2.2002 and/or 1.1.2003 under Rule 4 of the aforesaid Rules and therefore no reply could be filed by

the petitioner. No counter and/or affidavit-in-reply is filed on behalf of the respondents denying the allegation that notice under Rule 4 has not been served upon the petitioner. Apart from that even considering the order dated 28.2.2003, the impugned order is a non-speaking order as no reasons have been mentioned on what basis and evidence the market value of the property has been fixed at Rs. 42,00,000. There is no discussion whatsoever and on what basis and evidence the market value of the property in question has been fixed at Rs. 42,00,000 against the original valuation of Rs. 3,20,100, i.e., more than 12 to 14 times of the original valuation. Under the circumstances, the impugned order dated 28.2.2003 itself is required to be quashed and set aside only on the ground that the said order is a non-speaking order and no basis and evidence has been discussed on the basis of which market value of the property has been fixed at Rs. 42,00,000 and the matter is required to be remanded to the Deputy Collector, Stamp Duty valuation, Vadodara, for deciding the same afresh in accordance with law and on merits and after giving opportunity to the petitioner.

7. For the reasons stated hereinabove, the impugned order dated 28.2.2003 passed by the Deputy Collector, Valuation, Vadodara, with regard to Document No. 4182 dated 16.7.2001 registered at Sub-Registrar, Vadodara, is hereby quashed and set aside and the matter is remanded to the Deputy Collector, Stamp Duty Valuation, Vadodara, for deciding the same afresh in accordance with law and on merits and after giving opportunity to the petitioner. It will be open for the petitioner to file objection to fixation of the market value at Rs. 42,00,000 and the same may be considered by the Deputy Collector in accordance with law and on merits and after following necessary procedure as required to be followed under Rule 4 and Rule 8 of the aforesaid Rules. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

rmr.